

No. 4041.

IN THE
United States
Circuit Court of Appeals,
FOR THE NINTH CIRCUIT.

P. Piacenza,	}
<i>Plaintiff in Error,</i>	
<i>vs.</i>	
United States of America,	
<i>Defendant in Error</i>	}

BRIEF OF PLAINTIFF IN ERROR.

THEODORE GOTTSDANKER,
Attorney for Plaintiff in Error.

No. 4041.

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P. Piacenza,

Plaintiff in Error,

vs.

United States of America,

Defendant in Error

BRIEF OF PLAINTIFF IN ERROR.

P. Piacenza, plaintiff in error herein was accused by the United States attorney for the Southern District of California as follows [Tr. of Record, pp. 5, 6 and 7]:

“Form No. 689.

In the DISTRICT Court of the United States, For
the SOUTHERN District of CALIFORNIA
SOUTHERN DIVISION

THE UNITED STATES

vs.

P. PIACENZA and FRANK MORETTI,

.....
.....

INFORMATION. VIOLATING SECTION 21 &
25 Title II of the National Prohibition Act of October
28, 1919

UNITED STATES OF AMERICA, }
SOUTHERN DISTRICT OF CALIFORNIA } ss:

Be it Remembered, That JOSEPH C. BURKE the Attorney of the United States for the Southern District of California who prosecutes in behalf and with the authority of the United States, comes here in person into Court at this January Term thereof, and for the United States gives the Court to understand and be informed that one P. PIACENZA and FRANK MORETTI, whose full and true names are other than as herein stated, are to affiant unknown, late of the Southern Division of the Southern District of California, heretofore, to wit: on or about the 29th day of November, 1921, at Belvidere, County of Los Angeles, within said division and district, and within the jurisdiction of the United States and this Honorable Court, did knowingly, wilfully and unlawfully maintain a common nuisance, to-wit: a room, building and place on Riverside Street, Belvidere, County of Los Angeles, where intoxicating liquors then and there containing alcohol in excess of one half of one percent by volume, were manufactured, kept, sold and bartered for beverage purposes; in violation of Section 21, Title II of the National Prohibition Act of October 28, 1919.

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the said United States.

SECOND COUNT.

And the said Joseph C. Burke, who prosecutes for the United States as aforesaid, does further give the Court to understand and be informed:

That P. PIACENZA and FRANK MORETTI, whose full and true names are other than as herein

stated, to affiant unknown, late of the Southern Division of the Southern District of California, heretofore, to wit: on or about the 29th day of November, 1921, at Belvidere, County of Los Angeles, within said division and district, and within the jurisdiction of the United States and this Honorable Court, did knowingly, wilfully and unlawfully have in their possession certain property and apparatus designed for the manufacture of intoxicating liquor for beverage purposes containing alcohol in excess of one half of one percent, to wit: two stills, 50 gallons mash destroyed, five gallons moonshine and tools; in violation of Section 25, Title II of the National Prohibition Act of October 28, 1919.

contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

Whereupon, the said United States Attorney for the District aforesaid prays the consideration of this Court here in the premises, and that due process of law may be awarded against the said P. PIACENZA and FRANK MORETTI defendants, in this behalf to make their answer to the United States touching and concerning the premises.

Dated at Los Angeles, this 29th day of March, A. D. 1922.

Joseph C. Burke

United States Attorney for the Southern District of
California

Mark L. Herron

Assistant United States Attorney."

He was tried by a jury and found guilty as charged on both counts. From these verdicts, the judgment of the court and from its order denying his motions

in arrest of judgment and to set aside and vacate the judgment the plaintiff in error prosecutes this writ of error. [Tr. of Record, pp. 21, 22, 23, 24 and 25.]

STATEMENT.

There is only one point which the plaintiff in error raises. That point is: That there is not sufficient quantum of proof produced necessary to establish the venue.

The only evidence introduced upon this point by the Government is the testimony of Antonio R. Ragon who testified as follows [Tr. of Record, pp. 30 and 31]:

“(Testimony of Antone R. Ragon.)

LOS ANGELES, CALIF., TUESDAY, MARCH 13, 1923; 3:30 P. M.

(Jury impaneled and sworn.)

ANTONE R. RAGON, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

Q BY THE CLERK: What is your name?

A Antone R. Ragon

Q BY MR MEADER: What is your occupation?

A Investigator, District Attorney's office.

Q Are you a special deputy sheriff?

A Yes sir.

Q Were you such about the 29th of November, 1921?

A Yes sir.

Q Do you know the premises here? Withdraw that. Do you know the defendant in this case Mr. Piacenza?

A I saw him.

Q Did you see him on or about the 29th day of November, 1921?

A Yes sir.

Q Did you see him in Belvedere?

A Yes sir.

Q On Riverside street?

A Yes sir.

Q Now, who was with you at the time, Mr. Ragon?

A Mr. Ballinger.

Q Constable of Belvedere?

A Yes sir.

Q Just tell the jury what occurred the first time—Withdraw that. Was there anyone else with you besides Mr. Ballinger?

A When I first saw him, no.

Q Now, when you first saw him where was he and what was he doing, and what was said or done, if anything?

A Why, he just got home. He had been out in his machine and had just got home. Me and Mr. Ballinger was waiting for Mr O'Leary to come, and we told him—

Q That was at the premises on Riverside street, Belvedere?

A Yes sir.

Q Let me ask you, had you ever been around those premises before that occasion?

MR. CHAPMAN: Object to that as incompetent, irrelevant, immaterial; not within the issues of the case; no proper foundation laid.

THE COURT: Overruled.

Q BY MR. MEADER: Just answer the question.

A Why, yes, I had driven by there several times.

Q Now, do you know whether or not on or about the 29th day of November, 1921, there was a search warrant issued for the premises?

MR. CHAPMAN: Object to that as not being the best evidence.

THE COURT: Overruled.

This is the only testimony either direct or circumstantial which the Government introduced to establish the venue, and which we urge is certainly not sufficient.

According to this testimony the crime occurred at a place called Belvedere on Riverside street. [Tr. of Record, pp. 30 and 31.] There is not a scintilla of evidence to show where Belvedere is, whether it is in California or in what county.

The information alleges [Rec. of Tr., pp. 5 and 6] that: "on or about the 29th day of November, 1921, at Belvedere, county of Los Angeles, within said division and district and within the jurisdiction of the United States and this Honorable Court, did knowingly, wilfully and unlawfully maintain a common nuisance to-wit, a room, building and place on Riverside street, Belvidere, county of Los Angeles, etc." In the second count practically the same allegation is found as to venue.

The plaintiff in error respectfully submits that there is no proof to sustain the above allegation. There is no evidence to show that Belvedere is in Los Angeles county or within the division and district of the court. On this point we desire to call the court's attention that there is in fact a Belvedere in Marin county. (The New Reference Atlas of the World, published by Hammond & Co., New York, 1923, pages 88 and 89.)

The United States Constitution provides as follows:

“In all criminal prosecutions the accused shall enjoy the right to speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law. * * *

6th Amend. to U. S. Constitution.

The plaintiff in error respectfully calls the attention of this Honorable Court to the case of *Moran v. U. S.*, 264 Fed. 768, which by the way is also a liquor case, in which the court held: “It is incumbent upon the Government to prove venue in a prosecution under the act.”

The Supreme Court of the United States in the case of *Vernon v. U. S.*, 146 Fed. 121, said that the venue is as material as any other allegation in the information and the burden to prove it is on the Government.

In an Arkansas case, which was for murder, the highest court of that state awarded the defendant a new trial upon the ground that the indictment alleged that the crime was committed in the county of St. Francis, but the evidence failed to sustain that allegation.

Dobson v. State, 17 S. W. 3.

It has been also held in the case *supra* and in the case of *U. S. v. Ross*, 92 U. S. 284, that no presumption can be indulged in to prove the venue. The con-

sensus of opinion of our highest tribunals are that venue must be proven by evidence just as any other material allegation of the information, which in this case the Government has failed to do.

Calling the attention of the Honorable Court that there are at least two Belvederes in the state of California, and also to the fact that there is no testimony to show that the Belvedere where it is charged the crime was committed is situated in the state of California, or within the division and district of the court, the Government has failed to prove the venue, which makes it necessary to reverse the judgment.

Wherefore, plaintiff in error prays that said judgment of the District Court may be reversed and held for naught.

THEODORE GOTTSANKER,
Attorney for Plaintiff in Error.